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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 999

ROSALIND SLADE, ET AL.,
Petitioners,

v.

BOARD OF EDUCATION OF HARFORD COUNTY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Daily Record Co., Baltimore 3, Md.

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This Brief is submitted on behalf of the Board of Education of Harford County, Maryland, David G. Harry, President, Howard S. O'Neill, G. Robert Pennington, Samuel W. Galbreath, Mrs. Robert (Blanche S.) Fletcher and Charles W. Willis, Superintendent of the Schools of Harford County, Respondents, in opposition to the Petition of Roslyn Slade, Earlene Scott, Mona Leisia Scott, Bernard Blackstone, Larry Wilson Blackstone, Ellen Elizabeth Blackstone, and Maurice L. Horsey, III, for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Fourth Circuit affirming the Judgment of July 3, 1957 of the United States District Court for the District of Maryland (Thomsen, C.J.) setting forth a Plan of Desegregation for the Public Schools of Harford County.

OPINIONS BELOW

There were two Opinions of the District Court in this case, reported as "*Moore, et al. v. Board of Education of Harford County, et al.*" The First Opinion was dated November 23, 1956 and is reported at 146 F. Supp. 91; the Second Opinion was dated June 20, 1957 and is reported at 152 F. Supp. 114. The Opinion of the Court of Appeals for the Fourth Circuit was dated February 12, 1958 and is reported at 252 F. 2d 291.

QUESTION INVOLVED

Were the findings by the District Court (Thomsen, C. J.) that the Board of Education of Harford County, Maryland had made a prompt and reasonable start toward the desegregation of the Public Schools of Harford County and that additional time was necessary to effectuate such desegregation as set forth in the District Court's Judgment of July 3, 1957 clearly erroneous?

The Respondents maintain that the District Court's findings were not clearly erroneous; on the contrary they were clearly in accord with the great weight of evidence. These findings were affirmed by the Court of Appeals for the Fourth Circuit in its Per Curiam Opinion (App. 17)[1] and in effect the Opinion of the District Court was adopted as the Opinion of the Appellate Court.

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[1] "App." refers to the Appendix to the Petition for Certiorari; "App. R." refers to the Petitioners' Appendix Record in the Court of Appeals for the Fourth Circuit; and "Resp. App. R." refers to the Respondents' Appendix Record used in the Court of Appeals and filed as part of the Record in this matter.

STATEMENT IN ADDITION TO THE STATEMENT OF THE PETITIONERS

The Statement of the Petitioners omits reference to many of the facts appearing in the Record. Indeed, in the Petition there is no reference whatever to any of the evidence appearing in the 69 pages of the Respondents' Appendix in the Court of Appeals. It is, therefore, necessary to supplement the Statement of the Petitioners.

The State of Maryland from 1865, when its state-wide educational system was established, until 1955 — a period of 90 years — had separated the white and colored students in its schools. The system of "separate but equal" school facilities was instituted in 1872 and continued until 1955, a period of 83 years.

Very shortly after the Second Opinion in the *Brown* case, *Brown v. Board of Education of Topeka*, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (Warren, C. J.), was filed on May 31, 1955, the State Superintendent of Schools (Dr. Thomas G. Pullen, Jr.) requested an Opinion of the Attorney General of Maryland in regard to the effect of the *Brown* decision upon the provisions of the State Law requiring separation of the races in the public schools of Maryland.

On June 20, 1955, just twenty days after the filing of the Second Opinion in the *Brown* case, the Attorney General of Maryland rendered a formal Opinion (published in the Daily Record of June 29, 1955) in which he stated that "* * * *all constitutional and legislative acts of Maryland requiring segregation in the public schools of the State of Maryland are unconstitutional and must be treated as nullities.*" (Emphasis supplied.)

The Attorney General also stated that even though the State of Maryland were not a formal party to the *Brown*

and companion litigation, "*We do not believe that differences in the mechanics of obtaining relief can limit in any sense the legal compulsion presently existing on the appropriate school authorities of the State of Maryland to make 'a prompt and reasonable start' toward the ultimate elimination of racial discrimination in public education.*" Report and Official Opinions of the Attorney General, (of Maryland Vol. 40, page 175.

The State Board did not defy or seek to evade this opinion of the Attorney General of Maryland.

On the contrary, *two days later*, on June 22, 1955, the State Board passed a Resolution, in which, after various recitals, it stated:

> "Now that the Supreme Court has passed its mandate and has directed compliance with its decree with deliberate speed and with due regard to local conditions and in conformity with equitable considerations, the State Board of Education *calls upon* the local public school officials *to commence this transition at the earliest practicable date, with the view of implementing the law of the land.*" (Emphasis supplied.)

In the same resolution the Staff of the State Board was directed to cooperate with the local public school officials "to give effect * * * in the process of the transition from segregation to desegregation" and stated that it "trusts that all citizens will exercise patience and tolerance *to the end that the law of the land may be implemented in the elimination of racial discrimination in the public schools of the State.*" (Emphasis supplied.)[2]

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[2] Judicial notice may be taken of the fact that there have been three meetings of the General Assembly of Maryland since the Opinion of the Attorney General was promulgated, the "Short" Session of 1956, the "Regular" Session of 1957 and the "Short" Session of 1958 and that there were no Acts passed which attempted in any way to over-

Eight days after the Opinion of the Attorney General of Maryland of June 20, 1955 and thirty days after the filing of the Second Opinion of the Supreme Court of the United States in the *Brown* case, the Board of Education of Harford County (hereinafter referred to as the "County Board") on *June 30, 1955* selected a Citizens Consultant Committee of 36 members from all sections of Harford County, 5 of whom were colored citizens, to consider the problem of desegregation of the Harford County public schools and to make recommendations to the County Board.

The Citizens Consultant Committee held its first meeting on August 15, 1955, divided into Sub-Committees to consider (1) facilities, (2) transportation and (3) social relationship. A member of the Staff of the County Board served as a consultant to each sub-committee. These Sub-Committees met at various times during the remaining portion of 1955 and during January and February, 1956.

On February 27, 1956, the Citizens Consultant Committee held a meeting at which all of the Sub-Committees presented their final reports. None of the specific recommendations in those reports was adopted by the full Committee which *unanimously* adopted the following resolution.

> "To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be *granted* by the Board of Education in accordance with *such rules* and *regulations as it may adopt and in accordance with the available facilities in such schools;* effective for the school year beginning September, 1956." (Emphasis supplied.)

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rule or circumvent the Opinion of the Attorney General that any Maryland Constitutional or Statutory provisions requiring segregation in the public schools were nullities.

The Resolution of the Citizens Consultant Committee was adopted by the County Board on March 7, 1956.

On June 6, 1956 the County Board adopted a "Transfer Policy", (App. R. 8a-9a), which was duly advertised in the local newspapers. This "Transfer Policy" provided that if a child desired to attend a school other than the one in which he was enrolled or registered, his parents must request a transfer between June 13 and July 15, 1956, stating the reason for the transfer and bearing the approval of the principal of the school the applicant was then attending. It provided that:

> "While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason."

The County Board stated in the "Transfer Policy" that it would finally consider the application for transfer at its meeting of August 1, 1956. Children whose applications were approved, were required to enroll on the regular summer registration date, August 24, 1956. Sixty colored students filed applications for transfer.

On August 1, 1956, the County Board adopted a "Desegregation Policy". This is set out in full in Chief Judge Thomsen's Opinion of November 23, 1956 (App. 26-28). The County Board in accordance with its "Desegregation Policy" granted 15 of the 60 applications for transfer and denied 45 applications. No appeal was taken by the 45 applicants to the Maryland State Board of Education.

The District Court held that the action of the County Board was a prompt and reasonable start toward compli-

ance with the Second Opinion in the *Brown* case and that an appeal must be taken to the Maryland State Board of Education from the action of the County Superintendent in denying the 45 applications before the District Court would consider the question further.

Appeals were perfected to the State Board, and a hearing was held on February 27, 1957, at which all parties were represented by counsel (Resp. App. R. 59).

The President of the State Board is Wendell D. Allen, a prominent Baltimore Attorney. William A. Gunter, a distinguished Attorney from Western Maryland is a member of the State Board, as is also Dr. Dwight O. W. Holmes, an eminent colored educator, and President Emeritus of Morgan College (Resp. App. R. 59). All of the members of the State Board participated actively in the hearing.

At this hearing, the County Superintendent, Mr. Willis, outlined the considerations which the County Board considered in formulating its Desegregation Policy of August 1, 1956. These were in brief: (1) the likelihood of successful application of the desegregation policy in Edgewood and Aberdeen, where there were Army bases, and a "desegregated" atmosphere; (2) the wisdom of beginning the desegregation program with the younger children in the lower grades (a) where social problems were not so great and (b) both white and colored pupils would have the same educational program and background and could progress together with grade to grade; and (c) the available school facilities. In regard to this latter consideration, Mr. Willis pointed out that there had been a 100% increase in the Harford County school population in the past 10 years (from approximately 7,000 to 14,000) during which period the County Board has spent approximately $14,000,000 for school construction. The County Board

has a $3,000,000 building program projected, one-half for 1957 and the other half for 1958. The only elementary schools which had available facilities for the desegregation program on August 1, 1956, were Edgewood and Aberdeen, and Perryman, where there were no applications, and Darlington, in a very rural area, where there was only one application (Resp. App. R. 63-66).

The County Board's "Extension of the Desegregation Policy for 1957-1958", adopted February 6, 1957, was brought to the State Board's attention. This Resolution, in effect, extended desegregation to all of the elementary schools and all classes in those schools for the school year 1957-1958 which were not more than 10% overcrowded as of February 1, 1957. Mr. Willis explained that schools which are 10% overcrowded as of February 1, 1957, would be from 16% to 20% overcrowded in the fall of 1957, the beginning of the 1957-1958 school year. The normal class size was based on an average of 30 pupils for each classroom. This is in accordance with the State and National Standard (App. R. 33a). The building program would eliminate all of the overcrowding in the elementary schools by September, 1958, if there were no unforseen developments in the building program (Resp. App. R. 68). Mr. Willis pointed out that the new Junior College at Bel Air would be opened in September, 1957, on a desegregated basis (Resp. App. R. 68).

Mr. Willis stated that the County Board had moved forward in the desegregation of the public schools of Harford County "on a reasonable basis" and "with all practicable and deliberate speed" (Resp. App. R. 68).

This testimony was confirmed by Mr. Harry, the President of the County Board (Resp App. R. 69).

On March 4, 1957, the State Board by a *unanimous decision* dismissed the appeals, finding that (1) the County Board had acted within the policy established by the State Board, (2) the County Superintendent had acted in good faith within the authority set forth in the Desegregation Policy adopted on August 1, 1956, by the County Board; (3) that the Desegregation Policy of August 1, 1956, was adopted in a bona fide attempt to make a reasonable start toward desegregation of the Harford County public schools; (4) that the initial efforts had been carried out without any untoward incidents (Resp. App. R. 70-76).

On February 6, 1957, the County Board had passed a Resolution for "Extension of the Desegregation Policy for 1957-1958". In effect, it extended desegregation to *all* grades of *all* the elementary public schools in Harford County where space was available. It further provided:

> "Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.
>
> "Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarretsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.
>
> "All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

The District Judge indicated that the plan of the County Board was generally acceptable for elementary schools, but that he was doubtful about postponing desegregation completely in the High Schools until normally accomplished by the Plan's operation in the elementary schools with promotions to the High Schools in regular course. Judge Thomsen suggested that the parties try to agree on some plan for the High Schools during the transition period. This was attempted but Counsel for the Petitioners would not agree on any limitation of any number of colored pupils in the High Schools but insisted that "the Plaintiffs and the class they represent should be admitted to the High schools without any racial restrictions whatsoever" (Resp. App. R. 78).

The County Board modified its Desegregation Plan for the High Schools of Harford County during the interim period by providing for applications for transfers to High Schools near the applicant's home to be approved or disapproved on the "basis of probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested" (Resp. App. R. 78).

The final plan as modified was incorporated in the Decree of July 3, 1957 (prepared by Counsel for the Petitioners) with provision for the immediate admission of two of the infant plaintiffs (App. 18-20). The District Court retained

jurisdiction for any other relief which might become necessary.

The good faith of the Respondents was not challenged by the Petitioners (App. 30).

NO GROUNDS EXIST FOR THE GRANTING OF THE WRIT

I.

The Decision Below Does Not Conflict With the Decisions of This Court.

It is clear in the Opinions of the District Court and in the Opinion of the Court of Appeals that the applicable law which was followed and applied was that announced by this Court in the Opinions in the *Brown* case. The Opinions in the lower courts apply all of the language of *Brown* Opinions and not merely those portions selected by the Petitioners. All of the language in the Second Opinion is important. Chief Justice Warren stated for this Court:

> "Full implementation of these constitutional principles *may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems;* courts will have to consider whether the action of school authorities *constitutes good faith implementation of the governing constitutional principles.* Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts." (Emphasis supplied.) 349 U. S. at page 299.

> "In fashioning and effectuating the decrees, the courts will be guided by *equitable principles.* Traditionally, equity has been characterized by a *practical flexibility in shaping its remedies and by a facility for*

adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools *as soon as practicable on a nondiscriminatory basis.* To effectuate this interest may call for *elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision.* Courts of equity *may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner.* But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." (Emphasis supplied). 349 U. S. at page 300.

"While giving weight to these public and private considerations, the courts will require that the defendants make *a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practical date.* To that end, the courts *may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts* and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the *adequacy of any plans* the *defendants may propose* to meet these problems and to *effectuate a transition* to a racially *nondiscriminatory* school system. During this period of transition, the courts will retain jurisdiction of these cases." (Emphasis supplied.) 349 U. S. at page 300.

The questions involved in this case are *questions of fact* decided by the District Court after several hearings and affirmed by the Court of Appeals.

A. THE EVIDENCE SUPPORTS THE FINDING THAT "A PROMPT AND REASONABLE START" TOWARD THE DESEGREGATION OF THE PUBLIC SCHOOLS OF HARFORD COUNTY WAS MADE BY THE BOARD.

The evidence shows that the Attorney General of Maryland and the State Board moved with *haste* (rather than "deliberate speed") to announce the change in the long established Maryland policy in regard to separation of the races in the public schools. The County Board moved with great expedition to select the Citizens Consultant Committee, that is, on June 30, 1955, just 1 month after the filing of the Second Opinion in the *Brown* case. Although the colored students only amount to approximately 10% of the entire school population, 5 of the 36 members of the Citizens Consultant Committee, approximately 14% of the entire membership, were representative Negroes holding important positions or having a professional status. This Committee met promptly on August 15, 1955 and subdivided into Sub-Committees which studied the problems involved. The Sub-Committees presented their final reports at a meeting of the full Committee on February 27, 1956; none of the recommendations in the reports of the Sub-Committees was adopted, but the Resolution of February 27, 1956 was *unanimously* adopted by the *full* Committee, in effect leaving the granting of applications to the judgment and discretion of the County Board. The County Board, 8 days later, adopted the same Resolution.

The District Court held that these actions constituted a "prompt and reasonable start" toward compliance with this Court's Ruling (App. 32). They were most certainly

"prompt". They were entirely "reasonable". There is no evidence to the contrary.

B. THE EVIDENCE SUPPORTS THE FINDING THAT ADDITIONAL TIME WAS NECESSARY TO EFFECTUATE THE DESEGREGATION OF THE PUBLIC SCHOOLS OF HARFORD COUNTY AS SET FORTH IN THE JUDGMENT OF JULY 3, 1957.

The evidence shows that Harford County is predominantly a rural County. There are two large government reservations in the southern end of the County — Aberdeen Proving Ground at Aberdeen and the Army Chemical Center at Edgewood. On the government reservations, the housing developments are operated on a non-segregated basis.

In accordance with the Maryland law and policy prior to 1955, the Harford County public school system provided "separate but equal" school facilities for white and colored students. At the time of this suit, the County Board provided two large "consolidated" schools for approximately 1400 colored students, comprising elementary, junior high and senior high school classes at Hickory and at Havre de Grace. This was in accordance with the County Board's 6-3-3 system, that is, 6 years of elementary school, 3 years of junior high school and 3 years of senior high school. The same system was provided for approximately 12,600 white students. There were 18 white elementary schools[3] and 5 high schools, comprising junior and senior high schools at Bel Air, Bush's Corner (North Harford), Edgewood, Aberdeen and Havre de Grace,

[3] Emmorton, Edgewood, Aberdeen, Halls Cross Roads, Perryman Churchville, Youth's Benefit, State Ridge, Darlington, Havre de Grace, Old Post Road, Bel Air, Highland, Forest Hill, Jarrettsville, Dublin, 6th grade at Aberdeen High School and sixth grade at Edgewood High School.

It is conceded that the school facilities for the colored students were equal if not superior to the facilities for the white students.

The students, both white and colored, were transported free of charge to their schools unless they lived within walking distance of the respective schools. White students were required to attend the nearest white school and colored students the nearest colored school.

There were white teachers in the white schools and colored teachers in the colored schools.

During the past 10 years, the school population has increased 100% (from approximately 7,000 to 14,000) and the County Board has spent during that period approximately $14,000,000.00 for school construction. To relieve overcrowding and care for additional students, the County Board has a $3,000,000.00 building program, one half for 1957 and the other half for 1958.

Well before the beginning of the school year for 1956 (September 1956), the County Board on June 6, 1956 adopted its Transfer Policy, advising of the right to file applications for transfer to other schools, but specifically indicating that it reserved the right "during the period of transition to delay or deny the admission of a pupil to any school if it deems such action wise and necessary for any good and sufficient reason."

The County Board adopted its "Desegregation Policy" on August 1, 1956, outlined its proposals for the desegregation of the schools in Harford County and its reasons for the Plan. The County Board pointed out that this Court's decision "provided for an orderly, gradual transition based on the solution of varied local school problems and that the Resolution of the Citizens Consultant Committee was in accord with that principle and left to the

discretion of the County Board the "establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards and social relationships". The County Board recited that studies in areas where complete desegregation had been practiced indicated a lowering of school standards that was detrimental to all children and that experience in other areas showed that bitter local opposition to desegregation in a school system "not only prevents an orderly transition, but also adversely affects the whole educational program." The County Board also pointed out that its first concern must always be that of providing the best possible school system for *all* of the children of Harford County." (Emphasis supplied.) The County Board concluded that it would be best to start the desegregation policy with younger children where social problems posed by desegregation could be solved with the least emotionalism. It selected the first three grades in Edgewood Elementary School and Halls Cross Roads Elementary School for the approval of applications of Negro pupils from colored to white schools, pointing out that there were already integrated housing developments in these areas and that, with the exception of 2 small schools, (in one of which there was one application, in the other, none) these were the only elementary buildings in which space was available at the present time. The County Board further stated that the future rate of expansion of the program depended upon the success of the initial steps.

The County Board, in accordance with the policy, approved 15 of the 60 applications for transfer received, or 25%, and rejected 45 applications.

The program was successful and on February 6, 1957 (again well in advance of the 1957-1958 school year be-

ginning September 1957), the County Board substantially extended its desegregation policy by adopting a Resolution entitled "Extension of Desegregation Policy for 1957-58" (App. 33-34). This, in effect, provided for the acceptance of *elementary schools* in *all classes* in the area in which they lived, if space were available. Space would be considered available in schools not 10% overcrowded, as of February 1, 1957. All capacities were based on the State and National standards of 30 pupils per classroom (App. 33).

Mr. Willis, the County Superintendent, pointed out that in the opinion of the County Board the adjustment of pupils transferring from a colored to a white school could be accomplished more smoothly and with better results for the education of the pupil involved if the transfer were made to a school which was not substantially overcrowded. Mr. Willis further pointed out that a school which was 10% overcrowded as of February 1, 1957 would be more overcrowded in September, 1957. In his judgment, the figures would be 5% to 10% higher in September, 1957 (Resp. App. R. 37).

Mr. Willis summarized the factual situation in regard to the 7 schools which were overcrowded more than 10% as of February 1, 1957 (Resp. App. R. 35-37), as follows:

Name of Elementary School	*Percentage of Overcrowding as of February 1, 1957*
Sixth grade at Edgewood	12%
Old Post Road	24%
Forest Hill	17%
Bel Air	14%
Jarrettsville	10%
Highland	16%
Dublin	14%

The overcrowding in three of these Schools, Old Post Road, Bel Air and Highland, will be eliminated by September, 1958 and the overcrowding in the remaining four Schools, Forest Hill, Jarrettsville, Dublin, and Sixth grade at Edgewood High School, will be eliminated by September 1959 by the Building Program if there are no unforseen circumstances arising in that Program. Summarizing the situation in the elementary schools by percentages, 61% of the elementary schools were desegregated in full as of September, 1957; 17% more will be fully desegregated as of September, 1958; and, the remaining 22% will be fully desegregated as of September, 1939. Judge Thomsen held that the reasons given for this policy in regard to overcrowding were reasonable and that although this factor would not justify unreasonable delay, under the circumstances of this case, it justified the one or two years delay in desegregating the 7 schools mentioned (App. 38).

The District Court had indicated that although it was tentatively of the opinion that the desegregation for the elementary schools was reasonable and that the County Board had met the burden of proof in requiring the one of two years delay in desegregating the seven elementary schools mentioned, it was tentatively of the opinion that there could be some acceleration in the desegregation program so far as the high schools were concerned. The Court suggested that Counsel for the respective parties attempt to agree upon some reasonable plan for the interim period.[4]

[4] It should be kept in mind that the Harford County plan for desegregation would have worked automatically after the elementary schools were desegregated, as a colored student at one of the former white elementary schools would automatically proceed into the same junior high school as a white student in the same class. The entire high school system would thus be desegregated automatically by 1963 at the latest date, assuming that the County Board did nothing further in regard to its desegregation policy.

The Petitioners made much of the fact that in June, 1955 there were only 60 applications for transfer and seek to use this figure as the number of applications which would inevitably be filed. It is significant, however, to note that although requested by the District Court to seek to reach an agreement on the question of admissions during the interim period, Counsel for the Appellants *refused to make any agreement as to the number of applications during the interim period* (Resp. App. R. 78). In other words, the Petitioners insisted that the matter be left entirely open to *any number* of colored pupils who might apply during the interim period. Obviously, the County Board could not undertake this type of program, as it might well have resulted in the complete disruption of the entire school system if there were a substantial number of applications for transfer from the colored high schools to the white high schools during the interim period. There would obviously be disruption of the transportation system, the classrooms, the teaching staff, both in the white and colored high schools, as it must be remembered that the colored teachers and principals in the colored high schools must also be considered in the entire problem. Even more importantly, a transfer from a colored elementary school to a white high school would cause the colored child to face problems which do not arise if that child had normally proceeded from the elementary school to the junior high school in regular course. As pointed out by Mr. Willis and also in Judge Thomsen's Opinion of June 20, 1957 (App. 39), after a year or so in the high school, social groups, athletic groups and subject interest groups had begun to crystalize, friendships and attachments have been made. A child transferring to the school from another high school does not have the support of the group with which he has passed through the elementary school. A colored pupil trans-

ferring to an upper grade during the interim period would not have the benefit of his older brothers, sisters or cousins already in the school, or of his parents, relatives or friends who have been active in the Parent-Teacher Association. Mr. Willis also pointed out and the District Court found as a fact that high school teachers generally, with notable exceptions, are less pupil conscious and more subject conscious and are less likely than the teachers trained for elementary grades, to be helpful in readjustment. Judge Thomsen pointed out that the County Board had sound reasons for making the transition on a year to year basis so that most colored children would have a normal high school experience, entering in the seventh grade and continuing through the same school.

To meet the problem posed by the interim period, so far as the high schools were concerned, the County Board, notwithstanding the inability to reach an agreement with Counsel for the Petitioners in regard to the matter, modified its Desegregation Policy on June 5, 1957 which would permit *any student* wishing to transfer to a high school nearer his home, to apply between July 1 and July 15, 1957 for transfer for the year beginning September, 1957. Such an application would be evaluated on an individual basis by a Committee consisting of the high school principals of the two schools involved, the Director of Instruction and the County Supervisors working in those schools. The guides and standards set for the Committee were:

> "These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be

limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested" (App. 36-37).

The County Board again stated that it "and its professional staff would keep this problem under constant and continuous observation and study".

It should be noted that (1) the requirements for transfer during the interim period apply to *both white and colored students*,[3] and (2) the tests in the usual situation are the standardized intelligence and achievement tests which are given in regular course to *both white and colored students*. The Petitioners are in error in their statement that the requirements and tests apply *only* to colored students.

Judge Thomsen found that these guides and standards were reasonable and further that he had confidence in the integrity, ability and fairness of the County Superintendent, Mr. Willis, and of the principals, supervisors and others who would make the decisions under his direction. In any event, the District Court retained jurisdiction so that if any applicant or his parents thought that the plan during the interim period was not being equitably or properly applied, a prompt hearing in the District Court could be obtained.

The Petitioners suggest that it is quite improper for a County Board and a County Superintendent to give any consideration whatever to the possibility of strenuous or violent local opposition to a desegregation plan. This Court has not stated this to be the law, but on the contrary, has

[3] Subsequent to the passage of the Decree of July 3 1957, there have been three applications for transfers filed by *white* students, two of which applications have been granted and one refused. There have been no applications filed by any colored students up to the present time.

provided for a *gradual* rather than an immediate change-over from a segregated to a desegregated school system. Obviously opposition of a local community to such a transfer in its entirety cannot be permitted to "devitalize" the constitutional principles involved. This Court, however, clearly points out that the *public interest* which, of necessity, must include the maintenance of *public order* and *public tranquility* especially in the operation of the *public school system*, must be considered by the District Court as well as by the local school officials. This does not mean that there may be unreasonable delay, but it does mean that during an interim period of change from a segregated to a desegregated system, the application and the timing of the desegregation process may, in the good judgment of the County Board, be deferred or accelerated on a reasonable basis depending on the chances of success of the program. As the County Board has stated several times, its duty is to provide the best public school system it can for all the students of Harford County regardless of their color, and at the same time its duty is to implement within a reasonable time and with deliberate speed the decision of this Court in regard to the constitutional rights of the parties involved. This has been done on a reasonable basis by the County Board upon pedagogical considerations for the benefit of the entire school system and after evaluating administrative problems, personnel problems, transportation problems, and social adjustment problems involved in the situation.

It is well established by Rule 52(a) of the Federal Rules of Civil Procedure and by the decisions of this Court[6] that

[6] *U. S. v. National Association of Real Estate Boards*, 339 U. S. 485, 70 S. Ct. 711, 94 L. Ed. 1007 (1950 — Douglas, J.) and see other Supreme Court cases cited by Mr. Justice Douglas at page 495 of 339 U. S. 485.

the Petitioners must establish that the findings of the District Court were "clearly erroneous" in order to obtain a reversal. The careful and comprehensive Opinions of the District Court of November 23, 1956 and of June 20, 1957, the Judgment of July 3, 1957 itself and the great weight of the evidence — most of which was introduced by the Respondents and most of which is uncontradicted — show that the findings of the District Court were not clearly erroneous, but on the contrary were clearly in accord with the great weight of the evidence.

Then too, when the findings of fact of the District Court are supported by the evidence and are affirmed by the Court of Appeals, this Court should not grant certiorari to review those findings.

As Mr. Justice Jackson stated for this Court in *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U. S. 271, at 275, 69 S. Ct. 535, 93 L. Ed. 672, 677 (1949):

> "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error."

See also the four earlier cases of this Court cited in support of this statement at Page 275 of 336 U. S.

II.

There is No Conflict Among the Circuits

There can be no conflict among the Circuits in regard to the law applicable to segregation in the public schools. The applicable law is established by this Court in the Opinions in the *Brown* case. The application of the law to the factual situation in each case obviously varies with the

facts of each case, as this Court has indicated in the Second Opinion in the *Brown* case.

The *principles of law* in the Eighth Circuit applied in *Aaron v. Cooper*, 243 F. 2d 361 (C.A. 8 — 1957); in the Sixth Circuit in *Clemons v. Board of Education of Hillsboro*, 228 F. 2d 853; and *Booker v. Tennessee Board of Education*, 240 F. 2d 689 (C.A. — 1957) and in this case are the same; the factual situation in the cases in the Sixth Circuit were quite different. In the *Clemons* case, there was an attempt by the local school authorities in Hillsboro, Ohio, by use of a gerrymandered school district to circumvent and frustrate the law of Ohio since 1887 prohibiting segregation in the public schools of that State. The District Court, however, declined an injunction and its judgment "continued for an indefinite period the violation of law carried out by the Board of Education" (228 F. 2d at 857). The *Booker* case involved Memphis State College in which it was *anticipated that there would be an overcrowding* if all persons qualified for admission were admitted without restriction. The Board of Education provided for gradual admission of qualified negro students, but there was no limitation on white students, either non-residents of Tennessee or non-residents of Memphis. There was no building program to take care of any anticipated increase. These cases are obviously quite different from the case at bar.

The case at bar has more similarity on the facts to the case of *Aaron v. Cooper*, supra, which involved a gradual desegregation of the public schools in Little Rock, Arkansas. In Little Rock, however, the desegregation was begun in the 10th, 11th and 12th grades in the autumn of 1957, then in the 7th, 8th and 9th grades and then in the six elementary grades; the entire program to be completed by 1963. Not only are substantially all of the administrative, pedagogical

and other problems set forth in the District Court's Opinion in that case, (*Aaron v. Cooper*, 143 F. Supp. 855), present in the case at bar, but, in addition, the County Board in the present case had a predominantly rural County with transportation and other problems which were not present in the metropolitan area of Little Rock. Then too, in the present cases, the County Board's desegregation plan provided for transfers to the high schools during the interim period which was not a feature in the Little Rock plan so far as the elementary schools were concerned in the Little Rock plan during the interim period there.

The Petitioners suggest that in the several District Court cases, the problem of overcrowding had been treated not as a racial problem but as a spatial problem. The Petitioners, however, overlook the fact that *during the transfer period*, the racial and the spatial considerations are closely related in that the colored pupils already have "space" in the existing colored schools and there is not sufficient "space" during the interim period in the overcrowded white school to permit transfer from the colored to the white schools. The fact that if a few white students whose parents moved into Harford County, applied during a school year for admission to the white school in their neighborhood during the transfer period and would be admitted, as the law requires, does not indicate any racial discrimination, as the white pupil has "*no space*" to occupy, whereas the colored pupil has *his space* in the colored school. Counsel for the Petitioners have never been willing to agree on a number of applications for transfer during the interim period. It could not be assumed that the applications for transfer would necessarily be a small number.

It seems clear that there is no conflict in the Circuits and that there can be none.

CONCLUSION

The Petitioners are seeking a review of the facts in a case in which the facts were most carefully considered by the District Court and the District Court's Findings of Fact were affirmed and adopted by the Court of Appeals. The evidence shows that the Plan of Desegregation, approved in the Judgment of July 3, 1957, is equitable, reasonable, based on pedagogical and other criteria approved by this Court in the Second Opinion in the *Brown* case. The Plan is working well. All of the elementary schools will be 78% desegregated as of September, 1958, and the remaining 22% will be desegregated by September, 1959, when the building program will be completed. The high schools will be completely desegregated by 1963 with an appropriate system of transfers in individual cases during the interim period. The new Junior College in Bel Air, Maryland, has already been established on a desegregated basis. There has been no definance or attempt at circumvention of this Court's decision in the *Brown* case. The Respondents respectfully submit that no useful purpose can be served by granting a Writ of Certiorari in this case.

Respectfully submitted,

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